1949

The Snyder Mines Incorporated v. The Industrial Commission of Utah : Brief of Defendant

Utah Supreme Court

Attorneys for Defendant: Clinton D. Vernon; Attorney General; Fred F. Dremann; Special Assistant Attorney General;

7310

In the Supreme Court
of the State of Utah

THE SNYDER MINES INCORPORATED, a corporation, *Plaintiff*

vs.

THE INDUSTRIAL COMMISSION OF UTAH, Department of Employment Security, *Defendant*

Case No. 7310

DEFENDANT'S BRIEF

ATTORNEYS FOR DEFENDANT:

CLINTON D. VERNON,
Attorney General

FRED F. DREMANN, *Special Assistant Attorney General*

INDEX

Page

Statement of the Case 3

Statement of Facts 5

DEFENDANT'S POINTS OF ARGUMENT

The Lessees, Truckers, and E. H. Snyder Were Performing Services in Employment for the Plaintiff for Wages.... 6

The Employment Security Act conferring jurisdiction on the Industrial Commission to Assess and Collect Unemployment Compensation Contributions Did Not Violate Constitutional Provisions..... 12

Conclusion 20

INDEX OF AUTHORITIES

Combined Metals Reduction Company, et al vs. Industrial Commission of Utah, 101 Utah 230; 116 P. 2d 929..... 5

National Tunnel & Mines Corporation vs. Industrial Commission of Utah, 99 Utah 39: 102 P. 2d 514..... 5

Section 42-2a-19(j)(1) (Utah Employment Security Act).... 6

Section 42-2a-19(j)(5) (Utah Employment Security Act).... 7

Section 42-2a-19 (h)(2) (Utah Employment Security Act).. 7

Singer Sewing Machine Company vs. Industrial Commission et al, 104 Utah 175; 134 P. 2d 479..... 8

Article 13, Section 11 of the Utah Constitution 12

Utah Fuel Company vs. Industrial Commission, 57 Utah 246, 194 P. 122, 124 13

The Best Foods Co. vs. Christensen, 75 Utah 392, 285 P. 1001, 1004 16

State vs. Packer Corp., 77 Utah 500, 297 P. 1013 16

Utah State Fair Association vs. Green, 68 Utah 251, 249 P. 1016 16

Wadsworth vs. Santaquin City, 83 Utah 321, 28 P. (2d) 161, 167 16

Tintic Standard Mining Co. vs. Utah County, 80 Utah 491, 16 P. (2d) 637 16

Salter vs. Nelson, 85 Utah 460, 39 P. (2d) 1061 17

25 R.C.L., p. 100, et seq., Sections 243, 244, 245 17

Ex rel. Johnson vs. Alexander, 87 Utah 376, 49 P. (2d) 408 .. 19

State vs. Hoffman, 64 P. (2d) 615 19

Jeffrey Manufacturing Co., vs. Blagg, 235 U. S. 571, at 575, 576 19

Gorieb vs. Fox, 274 U. S. 603, 606 19

Stein vs. Kentucky State Tax Commission, 266 Ky. 469, 99 S. W. (2d) 443 19

Bourjois vs. Chapman, 301 U. S. 183 19

In the Supreme Court
of the State of Utah

THE SNYDER MINES INCORPORATED, a corporation,
Plaintiff

vs.

THE INDUSTRIAL COMMISSION OF UTAH, Department of Employment Security,
Defendant

Case No. 7310

DEFENDANT'S BRIEF

STATEMENT OF THE CASE

On the 9th day of January, 1941, a representative of the Department of Employment Security of the Industrial Commission of Utah entered a determination to the effect that certain lessees, under lease agreement with The Snyder Mines, Incorporated, had performed services "in employment" for that company during the calendar years 1936, 1937, 1938 and 1939 and that unemployment compensation contributions were due in the amount of $10,892.69 on the wages paid these men.

The company disagreed with this determination, and on the 18th day of January, 1941, filed an appeal. The hearing

on appeal before the Appeal Tribunal was postponed by an agreement of the parties pending a decision in the Combined Metals and National Tunnel & Mines cases.

On the 23rd day of February, 1943, a representative of the Department rendered an additional determination which held in effect that for the years 1940, 1941 and 1942 the company had failed to pay contributions on wages received by lessees, truckers and Mr. E. H. Snyder, President of the company, and that the services of these individuals were performed "in employment" with the company. The company disagreed with this determination, and on the 2nd day of March, 1943, filed an appeal.

Both appeals were heard by the Appeal Referee on the dates of June 15, July 13 and August 12 (circumstances having necessitated continuances). The Appeals Referee, on the 19th day of August, 1943, rendered his decision affirming the determination of the Department representative.

On the 27th day of August, 1943, The Snyder Mines, Incorporated filed an appeal from the decision of the Referee and asked for a hearing on the said appeal before the Industrial Commission of Utah as provided by law. The Commission took no action on the company's request for further hearing on appeal until November 22, 1948, at which time they notified the company that a hearing would be held on November 29 in the Governor's Board Room of the State Capitol Building. On the 1st day of March, 1949, the Industrial Commission affirmed the decision of the Referee and thereby in effect affirmed the decision of the representative.

STATEMENT OF FACTS

I.

Lessees

The lessees in question performed services pursuant to written lease agreements which were similar in all material respects to the agreements involved in the case of Combined Metals Reduction Company, et al vs. Industrial Commission of Utah, 101 Utah 230: 116 Pac. 2d 929 and National Tunnel & Mines Corporation vs. Industrial Commission of Utah, 99 Utah 39: 102 Pac. 2d 514.

As indicated by the petitioner on page 3 and 4 of its brief, the question regarding lessees is not as to whether or not the lessees were performing services "in employment" but rather, "the question remains whether the Commission exceeded its jurisdiction, acted in excess of its jurisdiction, or proceeded improperly against petitioner."

II.

Services of E. H. Snyder

E. H. Snyder was president of The Snyder Mines, Incorporated during the period in question, and he performed services of a professional nature for a regular monthly salary. As indicated in the testimony, which is summarized on page 6 and 7 of the petitioner's brief, E. H. Snyder was Vice President and General Manager of Combined Metals Reduction Company as well as the President of The Snyder Mines Incorporated. His superior knowledge of metallurgical conditions was used by the latter company in making decisions regarding ore trends in the mine.

III.

Truckers

The company engaged several individuals to operate company-owned trucks, and in addition, from time to time it made arrangements with men in the district who owned their own trucks to haul ore and waste for the company. Those men were paid either by the ton hauled or in certain instances by the hours that they and their trucks were retained. They worked only during the hours that the company-operated shovels were working, and to quote a letter from the company: "These trucks must dispose of ore or waste in whatever manner we direct." In the main the truckers engaged were formerly employed by the Bothwell Company, and the hauling was done primarily on the Snyder Mines property. The effective rate was $.25 per ton hauled and the men were paid twice a month on the regular settling-up days.

DEFENDANT'S ARGUMENT

I.

THE LESSEES, TRUCKERS, AND E. H. SNYDER WERE PERFORMING SERVICES IN EMPLOYMENT FOR THE PLAINTIFF FOR WAGES.

Section 42-2a-19(j)(1) and 19(j)(5) (Utah Employment Security Act) contain definitions of employment as follows:

> "(j)(1) 'Employment' means any service performed prior to January 1, 1941, which was employment as defined in the Utah Unemployment Compensation Law

prior to the effective date of this act, and subject to the other provisions of this sub-section, service performed after December 31, 1940, including service in interstate commerce, and service as an officer of a corporation performed for wages or under any contract of hire, written or oral, express or implied."

"(j)(5) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the Commission that—

"(A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of hire and in fact; and

"(B) such service is either outside the usual course of the busines for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

"(C) such individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service."

Section 42-2a-19(h)(2) of the Utah Employment Security Act provides:

"(2) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by such employing unit for all the purposes of this act whether such individual was hired or paid directly by such employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work."

In several cases decided by this court prior to 1943 this court upheld the theory that the aforementioned provision was intended to be broader in scope than the common law test of master and servant. In the case of Singer Sewing Machine Company vs. Industrial Commission, et al, 104 Utah 175; 134 P. 2nd 479, decided in 1943, this court set out in detail the principles and application of the above-quoted section as the court saw it, and we quote:

> "The examination of these opinions reveals that the members of this court are committed to the following:
>
> "(a) The unemployment compensation law was enacted under and as an exercise of the police power of the state.
>
> "(b) Its purpose is remedial to protect the health, morals, and welfare of the people by providing a cushion against the shocks and rigors of unemployment.
>
> "(c) Being remedial under the police power and not imposing limitations on basic rights, it should be liberally construed.
>
> "(d) 'Employment' under the act is not confined to common law concepts, or to the relationship of master and servant, but is expanded to embrace all services rendered for another for wages.
>
> "(e) The terms 'employment,' 'personal services' and 'wages' are much broader in meaning and application than their common law counterparts, and encompass in their coverage many persons and relationships not included in the common law relationship of master and servant.
>
> "(f) All situations where one rendering services for another for 'wages' is under the direction and control of

such other in the rendering of such service, are service relationships within Sec. 19 (j)(1) of the act.

"(g) The absence of direction and control does not necessarily exclude the parties, or the relationship from the operations or scope of the act.

"(h) In determining if the relationship is within the act, the Commission and the court will look behind the contract to the actual situation—the status in which the parties are placed by the relationship that exists between them.

"(i) The test is twofold: Did he render personal service for another? If so, was he entitled to remuneration (wages) therefor? If both are found, the relationship is within the act.

"(j) If the relationship is within the act, we apply Section 19(j)(5) to determine if he is entitled to benefits, provided the claimant meets all other requirements of the act to bring him within its provisions.

"(k) Section 19(j)(5) is an exception section taking or sifting out from the right to receive benefits, certain persons who otherwise come within the act, as 'rendering personal services for wages' and is not a test to determine whether the relationship was a service one."

Under this summary, then, we are confronted with a twofold problem: (1) Were the individuals in question performing "personal services" for "wages" for the plaintiff; and (2) if the relationship was one of the performance of personal services for wages, has the employer satisfied all three of the exclusion tests which are provided in Section 19(j)(5)(a), (b) & (c).

(A) In the first paragraph as regards the question of whether or not the lessees were performing services "in em-

ployment" for "wages," the matter seems to be settled by the stipulation entered into between counsel for the parties which stipulation and the legal effect thereof is referred to on pages 3 and 4 of the petitioner's brief. This court's decisions in the cases of National Tunnel & Mines Corp. vs. Industrial Commission, 99 Utah 39:102 Pac. 2d 514, and Combined Metals Reduction Co. et al vs. Industrial Commission, 101 Utah, 230; 116 Pac. 2d 929, found that "lessees" such as are involved herein were performing services "in employment" for "wages."

(B) Concerning the question as to whether or not the truckers were performing services under the service relationship as defined, there appears to be little doubt these individuals were performing services for the company for wages pursuant to an oral agreement whereby they agreed to use their own trucks and to haul ore and waste on a per-tonnage basis. The record shows that the matter of their performance was fully explored by the Appeal Referee, with the company having full opportunity to present facts concerning the matter at issue. There is no proof by the company that in the performance of services these individuals could be shown to come within the exclusion provisions of Section 19(j)(5). To the contrary, they were employed for an indefinite period of time and the employment could be terminated at any time by the company. All of their services were performed under the express direction of other company employees as to the point from which the ore was to be hauled, when it was to be hauled, and where it was to be dumped or unloaded. The ore hauling was a necessary integrated part of the company's mining operation and was done primarily on the company's premises. The in-

dividuals engaged in the hauling were, for the most part, former employees of a trucking company and were not in any sense of the word according to the testimony independently established in a business of the same nature as was involved in their performance of services for The Snyder Mines.

Since the decision of the Industrial Commission is fully supported by facts, it becomes the duty of this court to determine whether or not the Commission has made a proper application of the law. We submit that the conclusion of the Commission is the only one which could have been made in light of the facts.

(C) In view of the previous decisions of this court and the well settled formula of the law, we fail to see wherein the company has made a case for the exclusion of the services of E. H. Snyder. The testimony and the record shows that Snyder's time was fully occupied in his services as Vice President and Manager of the Combined Metals Reduction Company and his technical services which were performed for the Snyder Mines. The testimony of Neil Snyder, Manager of The Snyder Mines, Incorporated, and the record shows that E. H. Snyder's services were paid for by means of a regular monthly salary. He was performing services in a service relationship for wages even though such services were confined primarily to the giving of technical advice with reference to the interpretation of general ore trends in the mine operation. The company contends that his technical services were given pursuant to an established profession as metallurgist and were made possible by his superior knowledge of mining operations. We submit that this very fact formed the basis for the company's use

of his services. There has been no showing by the company that he was independently established in a profession. Nowhere does the testimony indicate that E. H. Snyder held himself out to the general public as a professional man. In fact the record shows that he did not perform similar services for companies other than Combined Metals Reduction Company and the Snyder Mines. The Commission correctly concluded that Snyder was performing services pursuant to a service relationship for wages (by means of a monthly salary) and that the exclusion provisions of Section 19(j)(5) had not been met.

II.

THE EMPLOYMENT SECURITY ACT CONFERRING JURISDICTION ON THE INDUSTRIAL COMMISSION TO ASSESS AND COLLECT UNEMPLOYMENT COMPENSATON CONTRIBUTIONS DID NOT VIOLATE CONSTITUTIONAL PROVISIONS.

The petitioner argues that the Employment Security Act is in violation of Article 13, Section 11 of the Utah constitution which provides in part: "The State Tax Commission shall administer and supervise the tax laws of the state."

This court in its decision in the case of Singer Sewing Machine Company vs. Industrial Commission, supra, stated, referring to previous opinions regarding the Employment Security Act: "The examination of these opinions reveals that the members of this court are committed to the following: (a) The unemployment compensation law was enacted under,

and as an exercise of the police power of the state; (b) its purpose is remedial to protect the health, morals, and welfare of the people by providing a cushion against the shocks and rigors of unemployment; (c) being remedial under the police power and not imposing limitations on basic rights, it should be liberally construed."

It is of importance to observe that Article 13, Section 11 of the Utah constitution refers to "tax laws." Thus, the constitution does not purport to give exclusive jurisdiction to the Tax Commission with respect to the administering and supervision of all laws involving compulsory payment. The constitution avoids the ambiguity inherent in the use of the common word "taxes" and conveys the impression that the Tax Commission's jurisdiction is limited to laws which are imposed exclusively by virtue of the taxing power of the state. This is clearly evidenced by the legislative expression of this provision of the state constitution. For example, the monies paid by employers into the State Insurance Fund under the Workmen's Compensation law (a law which is predicated on the exercise of the police power of the state, Utah Fuel Company vs. Industrial Commission, 57 Utah 246, 194 P. 122, 124), are not collected or administered by the State Tax Commission. Similarly, under the Fish and Game laws the Fish and Game Commissioner collects fees and license monies and determines liability independently of the Tax Commission. These fees and monies are deposited by the Commission in a special fund which is administered by him separately and apart from the general funds of the state which are collected under the "taxing laws."

The Department of Registration likewise collects monies and determines issues of liability with respect to many matters entrusted by the legislature to it for supervision, administration and control.

The line which distinguishes an exercise of the police power from an exercise of the taxing power is difficult to draw, but notwithstanding these difficulties, there are criteria available for determining whether a general statute falls on one side of the line or the other.

There is no validity to the argument that the Utah Employment Security Act is a "revenue act" or that revenue is the primary purpose of the law and that regulation which is inherent in the police power of the state is merely incidental. The Act provides for an unemployment compensation fund "which shall be administered separate and apart from all public monies or funds of the state," and which is to be administered by the State Treasurer not in his regular capacity but "as ex-officio treasurer and custodian." The fund consists of all contributions collected under the Act, and the Industrial Commission is vested with full power authority and jurisdiction over the fund. Contributions collected are deposited in the Federal Unemployment Trust Fund and are requisitioned therefrom by the Industrial Commission (through the treasurer acting as its fiscal agent) from time to time in such amounts as it deems necessary for anticipated benefit payments. When requisitioned, such monies are required to be deposited in the unemployment compensation fund in a special benefit account, and benefits are to be paid therefrom in accordance with such

regulations as the Industrial Commission may prescribe. The monies may be used only to pay benefits.

It is apparent that the system of collection and the payment of benefits contemplated by the legislature differs fundamentally and radically from that set up by statute for the collection of general taxes. It is significant that the contributions collected never become a part of, nor are they ever mingled with the public funds of the State or its Treasury, which are available for defraying the general expenses of government. The legislature had in mind the integrated nature of the whole unemployment program when it designated the Industrial Commission as the agency which would be charged with the duty of collecting contributions.

The individual worker, when filing a claim for benefits, depends for his eligibility and duration upon the earnings which he has had from covered employers, which earnings have been reported to the Industrial Commission, and contributions paid thereon. If he has no earnings or has insufficient earnings from employers who are subject to the Act, he, of course, does not fall in that class of individuals who are entitled to the protection of the Act. It is logical to assume that there may be proper and efficient administration only when the power to determine the eligibility of the claimant and the contribution due from the employer (as a result of the employer having individuals in covered employment) is given to a single administrative agency or department.

As Justice Wolfe pointed out in his concurring opinion in the case of National Tunnel & Mines Company vs. Industrial Commission, supra:

"I think that when the fact of 'employment' is found for the purpose of determining benefits, it is meant to be binding as to the question of determination of 'contributions' . . ."

He further stated:

"If the Industrial Commission may be sure that the appeal to this court from its findings as to that applicant will set the question at rest, it will be guided by the decision in said appeal in determining the question of benefits for the entire class. There is some chance, at least, to obtain in such proceedings a decision of this court before the Fund is depleted by many payments to alleged employees whose alleged employers need not contribute."

Justice Wolfe pointed out in his opinion:

"Where one of two constructions of the law would render an act unworkable or only haltingly workable, or would fail to effectuate the obvious intent of the legislature and another contribution equally or nearly as feasible would bring opposite results, it is our duty to adopt the latter. I see nothing in logic or precedent that requires us to accept the construction of the main opinion. This is a case in which we are dealing with the administration of a public act designed to benefit a class and society as a whole by cushioning the effect of unemployment. It is not the case of a private controversy involving only the rights of A against B."

See also The Best Foods Co. vs. Christensen, 75 Utah 392, 285 P. 1001, 1004, and particularly, the cases cited at that page. See also State vs. Packer Corp., 77 Utah 500, 297 P. 1013; Utah State Fair Association vs. Green, 68 Utah 251, 249 P. 1016; Wadsworth vs. Santaquin City, 83 Utah 321, 28 P. (2d) 161, 167; Tintic Standard Mining Co. vs. Utah

County, 80 Utah 491, 16 P. (2d) 637; Salter vs. Nelson, 85 Utah 460, 39 P. (2d) 1061; 25 R.C.L., p. 100, et seq., sections 243, 244, 245.

It was further stated in that opinion:

> "Certainly there is a distinction between 'contributions' to a fund which is designed for the welfare of a class and a tax for general purposes although both are 'exactions,' and even though the effect of both is the same on the tax payer. It is important to keep our nomenclature correct, but more important that our concepts not be confused. It may well be that the type of contribution which is exacted for the unemployment insurance fund is not a 'tax' in the sense that that term was used in the constitutional provision which gave the Tax Commission administration and supervision of tax laws. Certainly the contributions may be looked at as payments into a fund for specific purposes—the whole encompassed by the police power even though not regulatory . . .
>
> "I see no essential difference between a required contribution toward an unemployment insurance fund and a required payment of a percentage of a pay roll into a compulsory state insurance fund for disability compensation as is done in Ohio . . .
>
> "The unemployment compensation act sets up a plan which places on the employing class the duty of bearing one of the burdens which the law in its march now considers one of the hazards of industry, to wit: unemployment. Disability by accident in industry has long been considered one of the incidents which industry must be prepared to meet. Unemployment may be considered in the same light although in it the relation of cause and effect is not so clear as in cases of disability through accident which occurred during employment Industry may be thought of as responsible for an indi-

vidual's unemployment in the sense that such unemployment is caused by industry's failure to absorb him . . .

"Unemployment is considered a responsibility of industry. Hence, industry is required to contribute to a fund to relieve it. The whole scheme of unemployment compensation, including the raising of a fund, may be considered as an integrated whole, all of which falls under police power, since only that class which is employed benefits and only industry, upon whom society puts the direct responsibility, contributes to alleviate this condition of unemployment of its workers. In that sense the plan is a unit, an integrated whole, a self-contained scheme under the police power. If the general public, regardless of the employer-employee relationship were taxed, the situation might be different. The difference in the last analysis may be one in degree between the relation of the unemployed and industry and the relation of the unemployed and the public . . ."

While the decision in the National Tunnel & Mines case, supra, did not decide the question as to whether or not the Industrial Commission might constitutionally determine who was subject to the payment of unemployment compensation contributions, we think that the excerpts hereinabove set forth from Justice Wolfe's concurring opinion outline the real basis of the matter at issue in the instant case and clearly show that the contribution which is levied under the Employment Security Act is not a tax in the sense of the word as used in the constitution. The legislative intent is further evidenced by the fact that reduced rates of contribution are based upon the length of time the employer has been in business and upon the stability of his pay rolls. The theory which is evidenced,

of course, is that the employer who has a relatively stable pay roll from quarter to quarter and year to year has offered workers a steady means of income and has not increased the total unemployment load in the state. The employer who is qualified for a reduced rate may pay as low as .7 of one per cent while the employer who is not so qualified is compelled to pay 2.7 per cent into the unemployment compensation fund.

We submit that unemployment compensation contributions are not "taxes" within the meaning of the constitutional provision. We submit further that it is a well settled principle of law that an individual who attacks the constitutionality of a statute must show beyond question that the statute in its operation injures him. This principle has been stated by this honorable court in the cases of Ex rel. Johnson vs. Alexander, 87 Utah 376, 49 P. (2d) 408; and, State vs. Hoffman, 64 P. (2d) 615. See also, Jeffrey Manufacturing Co., vs. Blagg, 235 U. S. 571, at 575, 576; Gorieb vs. Fox, 274 U. S. 603, 606; Stein vs. Kentucky State Tax Commission, 266 Ky. 469, 99 S. W. (2d) 443; Bourjois vs. Chapman, 301 U. S. 183. We fail to see how the company is in any way injuriously affected by the order of the Commission requiring it to pay contributions on the earnings of the individuals in question, since this court has previously, in numerous cases, held that the intent of the Act was to cover such services as are here involved.

It is of interest to note that during the period commencing July 1, 1941 (when the Employment Security Act was changed to place the responsibility of making collections directly on

the Industrial Commission) and ending August 31, 1949, the Commission and its representatives have collected for the unemployment compensation fund $38,438,000. During this same period, the Commission has dispersed through benefits to eligible claimants $15,166,027.

CONCLUSION

In conclusion we respectfully submit that the individuals, including lessees, truckers, and E. H. Snyder, involved in this matter were performing services in employment for the plaintiff for wages, and we further submit that the Employment Security Act, conferring jurisdiction on the Industrial Commission to assess and collect unemployment compensation contributions, did not violate constitutional provisions.

Respectfully submitted,

CLINTON D. VERNON,
Attorney General

FRED F. DREMANN, *Special Assistant Attorney General*